

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re MCG Health Data Security Issue  
Litigation

No. 2:22-cv-849-RSM-DWC

**STIPULATED PROTECTIVE  
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties (“Parties”) to this action hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. DEFINITIONS

2.1 “Confidential” Material

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (1) trade secret or other confidential research, development, or commercial information, or other information or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c); (2) sensitive and/or non-public contractual terms, settlement

1 agreements or settlement communications with customers, vendors, advertising platforms, and  
2 other parties; (3) sensitive pricing and other financial information; (4) Protected Health  
3 Information (“PHI”) and other information subject to the Health Insurance Portability and  
4 Accountability Act (“HIPAA”); (5) sensitive information regarding customers, customer lists,  
5 customer usage, and customer technical requirements; (6) sensitive product development  
6 information and information relating to new products; (7) sensitive development processes,  
7 designs, drawings, engineering, and hardware and software configuration information; (8)  
8 sensitive marketing plans, business plans, forecasts, and business strategies; (9) sensitive  
9 communications and information relating to products and services, including, but not limited to,  
10 systems and marketing data, which in the hands of competitors would be valuable; (10) other  
11 protected personal information (including contact information) and information subject to privacy  
12 laws or prohibited from disclosure by statute; (11) other non-public business information that is  
13 treated confidentially by the producing party in the ordinary course of business, the disclosure of  
14 which may cause the producing party to be commercially disadvantaged or prejudiced; (12)  
15 information received in confidence from third parties; and (13) information which the producing  
16 party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the  
17 Federal Rules of Civil Procedure.

18       2.2     “Expert”

19       “Expert” means a person with specialized knowledge or experience in a matter pertinent to  
20 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
21 as a consultant in this action, (2) is not an officer, director, or employee of a Party or an officer,  
22 director, or employee of a business competitor to a Party, and (3) at the time of retention, is not  
23 anticipated to become an officer, director, or employee of a Party or of a Party’s business  
24 competitor.

1           2.3     “Highly Confidential – Attorneys’ Eyes Only”

2           “Highly Confidential – Attorneys’ Eyes Only” materials shall include extremely sensitive  
3 “Confidential” material, disclosure of which to another Party or Non-Party would create a  
4 substantial risk of serious harm that could not be avoided by less restrictive means.

5           2.4     “Protected Material”

6           “Protected Material” shall include any disclosure or material that is designated as  
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

8     3.     SCOPE

9           The protections conferred by this agreement cover not only Protected Material (as defined  
10 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
11 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,  
12 or presentations by parties or their counsel that might reveal Protected Material.

13           However, the protections conferred by this agreement do not cover information that is in  
14 the public domain or becomes part of the public domain through trial or otherwise.

15     4.     ACCESS TO AND USE OF PROTECTED MATERIAL

16           4.1     Basic Principles. A receiving party may use Protected Material that is disclosed or  
17 produced by another party or by a non-party in connection with this case only for prosecuting,  
18 defending, or attempting to settle this litigation. Protected Material may be disclosed only to the  
19 categories of persons and under the conditions described in this agreement. For the sake of clarity,  
20 Protected Material may not be disclosed to putative class members unless and until a class  
21 comprising those absent class members is certified or those absent class members otherwise  
22 become parties to this action. Protected Material must be stored and maintained by a receiving  
23 party at a location and in a secure manner that ensures that access is limited to the persons  
24 authorized under this agreement.

25           4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
26 by the court or permitted in writing by the designating party, a receiving party may disclose any  
27 Protected Material (other than information or items designated “HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY") only to:

2 (a) the receiving party's outside or inside counsel, as well as employees of such  
3 counsel and any persons employed by or retained by such counsel for the purpose of assisting in  
4 the conduct of this action (such as database managers, paralegals and clerical assistants) to whom  
5 it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the  
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
8 agree that a particular document or material produced is for Attorneys' Eyes Only and is so  
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of  
14 Protected Material, provided that counsel for the party retaining the copy or imaging service  
15 instructs the service not to disclose any Protected Material to third parties and to immediately  
16 return all originals and copies of any Protected Material;

17 (f) during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
21 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this agreement;

23 (g) the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information; and

25 (h) other persons only by written consent of the producing party or upon order  
26 of the Court and on such conditions as may be agreed or ordered.

1           4.3     Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

2     Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
3     designating party, information or items designated “HIGHLY CONFIDENTIAL –ATTORNEYS’  
4     EYES ONLY” shall be kept highly confidential and shall not be communicated in any manner,  
5     either directly or indirectly, to any person or other entity other than to:

6           (a)     the receiving party’s outside counsel of record in this action, as well as  
7     employees of said outside counsel of record to whom it is reasonably necessary to disclose the  
8     information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
9     Bound” that is attached hereto as Exhibit A;

10          (b)     in-house counsel of the receiving party (1) who has no involvement in  
11     competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,  
12     and (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13          (c)     Experts of the receiving party (1) to whom disclosure is reasonably  
14     necessary for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be  
15     Bound” (Exhibit A);

16          (d)     the court and its personnel;

17          (e)     court reporters and their staff, professional jury or trial consultants, and  
18     professional vendors to whom disclosure is reasonably necessary for this litigation and who have  
19     signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20          (f)     the author or recipient of a document containing the information or a  
21     custodian or other person who otherwise possessed or knew the information; and

22          (g)     other persons only by written consent of the producing party or upon order  
23     of the Court and on such conditions as may be agreed or ordered.

24           4.4     Filing Protected Material. Before filing Protected Material or discussing or  
25     referencing such material in court filings, the filing party shall confer with the designating party,  
26     in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
27     remove the confidential designation, whether the document can be redacted, or whether a motion

1 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
2 designating party must identify the basis for sealing the specific confidential information at issue,  
3 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
4 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
5 the standards that will be applied when a party seeks permission from the court to file material  
6 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
7 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
8 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
9 the strong presumption of public access to the Court's files.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
12 or non-party that designates information or items for protection under this agreement must take  
13 care to limit any such designation to specific material that qualifies under the appropriate  
14 standards. The designating party must designate for protection only those parts of material,  
15 documents, items, or oral or written communications that qualify, so that other portions of the  
16 material, documents, items, or communications for which protection is not warranted are not swept  
17 unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
19 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
20 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
21 and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it designated for  
23 protection do not qualify for protection, the designating party must promptly notify all other parties  
24 that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
26 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or  
27 ordered, disclosure or discovery material that qualifies for protection under this agreement must

1 be clearly so designated before or when the material is disclosed or produced.

2 (a) Information in documentary form: (e.g., paper or electronic documents and  
3 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
4 the designating party must affix the word “CONFIDENTIAL” or the words “HIGHLY  
5 CONFIDENTIAL –ATTORNEYS’ EYES ONLY” to each page that contains Protected Material.  
6 If only a portion or portions of the material on a page qualifies for protection, the producing party  
7 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
8 margins).

9 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
10 and any participating non-parties must identify on the record, during the deposition or other pretrial  
11 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
12 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
13 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
14 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
15 at trial, the issue should be addressed during the pre-trial conference.

16 (c) Other tangible items: the producing party must affix in a prominent place  
17 on the exterior of the container or containers in which the information or item is stored the word  
18 “CONFIDENTIAL” or the words “HIGHLY CONFIDENTIAL –ATTORNEYS’ EYES ONLY.”  
19 If only a portion or portions of the information or item warrant protection, the producing party, to  
20 the extent practicable, shall identify the protected portion(s).

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
22 designate qualified information or items does not, standing alone, waive the designating party’s  
23 right to secure protection under this agreement for such material. Upon timely correction of a  
24 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
25 in accordance with the provisions of this agreement.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any party or non-party may challenge a designation of

1 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
3 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
4 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
5 original designation is disclosed.

6       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
7 regarding confidential designations without court involvement. Any motion regarding confidential  
8 designations or for a protective order must include a certification, in the motion or in a declaration  
9 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
10 affected parties in an effort to resolve the dispute without court action. The certification must list  
11 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
12 to-face meeting or a telephone or video conference.

13       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
14 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
15 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
16 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
17 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
18 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
19 the material in question as confidential until the court rules on the challenge.

20       7.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
21               OTHER LITIGATION

22       If a party is served with a subpoena or a court order issued in other litigation that compels  
23 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that party must:

25               (a)     promptly notify the designating party in writing and include a copy of the  
26 subpoena or court order;

27               (b)     promptly notify in writing the party who caused the subpoena or order to



1 issue in the other litigation that some or all of the material covered by the subpoena or order is  
2 subject to this agreement. Such notification shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
4 the designating party whose Protected Material may be affected.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Protected  
7 Material to any person or in any circumstance not authorized under this agreement, the receiving  
8 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
9 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
10 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
11 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
12 Bound” that is attached hereto as Exhibit A.

13 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
14 MATERIAL

15 When a producing party gives notice to receiving parties that certain inadvertently  
16 produced material is subject to a claim of privilege or other protection, the obligations of the  
17 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
18 is not intended to modify whatever procedure may be established in an e-discovery order or  
19 agreement that provides for production without prior privilege review. The parties agree to the  
20 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

21 10. NON TERMINATION AND RETURN OF DOCUMENTS

22 Within 60 days after the termination of this action, including all appeals, each receiving  
23 party must return all Protected Material to the producing party, including all copies, extracts and  
24 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

25 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
26 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work

1 product, even if such materials contain Protected Material.

2       The confidentiality obligations imposed by this agreement shall remain in effect until a  
3 designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 1st day of December, 2023.

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents, electronically stored information (ESI) or information, whether inadvertent or  
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
6 documents, including the attorney-client privilege, attorney work-product protection, or any other  
7 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum  
8 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
9 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
10 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
11 segregation of privileged and/or protected information before production. Information produced  
12 in discovery that is protected as privileged or work product shall be immediately returned to the  
13 producing party.

14  
15 DATED this 4th day of December, 2023.

16  
17 

18 \_\_\_\_\_  
19 David W. Christel  
20 Chief United States Magistrate Judge  
21  
22  
23  
24  
25  
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27

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court for the Western District of Washington on  
\_\_\_\_\_, 202\_\_ in the case of In re MCG Health Data Security Issue Litigation, Case  
No. 2:22-cv-849-RSM-DWC. I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this Stipulated Protective  
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_